IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ICONTROL NETWORKS, INC., a Delaware corporation, **Plaintiff,** **v.** **ZONOFF INC., a Delaware corporation,** **Defendant.**	**CIVIL ACTION** **NO. 1:14-CV-1199-GMS**

DEFENDANT ZONOFF INC.'S ANSWERING CLAIM CONSTRUCTION BRIEF FOR U.S. PATENT NOS. 7,262,690, 6,624,750, 8,612,591, 8,478,871, 8,638,211, AND 8,335,842

TABLE OF CONTENTS

I. INTRODUCTION 1

II. DISPUTED TERMS FOR CONSTRUCTION 1

A. U.S. Patent No. 7,262,690.. 1

Term 1. "control unit for receiving signals from a variety of detection devices monitoring events pertaining to security" 1

Term 2. "control means for actively controlling one or more detection devices" 4

Term 3. "means for transferring information related to the reception of such signals to a remote monitoring station"............................ 6

Term 4. "programmable storage means storing automatic evaluation routines to initiate the automatic transfer of information to a chosen remote user terminal"... 8

B. U.S. Patent No. 8,612,591.. 10

Term 1. "proprietary to the security system" 10

C. U.S. Patent No. 8,478,871.. 11

Term 1. "logic that [1] sends via the remote network a request to a gateway registry, the request specifying a serial number of the gateway device, [2] receives an address of a gateway server that has an account associated with the gateway device and an identification of the account, [3] sends to the gateway server the identification of the account, and [4] manages the set of local management devices using account information received in response to the identification"............... 11

Term 2. "gateway registry" 14

D. U.S. Patent No. 8,335,842.. 15

Term 1. "autonomous network" 15

Term 2. "associative binding" 16

Term 3. "an assigned server address"... 18

Term 4. "initiating, by the gateway, all communications with a network operations center server using the assigned server address"... 19

III. CONCLUSION.. 20

TABLE OF AUTHORITIES

Page(s)

CASES

ABB Atomation Inc. v. Schlumberger Res. Mgmt. Servs., Inc.,
No. CIV.A. 01-077-SLR, 2003 WL 1700013 (D. Del. Mar. 27, 2003)....11

ACTV, Inc. v. Walt Disney Co.,
346 F.3d 1082 (Fed. Cir. 2003)....16

AllVoice Computing PLC v. Nuance Commc'ns., Inc.,
504 F.3d 1236 (Fed. Cir. 2007)....4

Bayer Intellectual Prop. GmbH v. Warner Chilcott Co., LLC,
No. CV 12-1032-GMS, 2015 WL 1849015 (D. Del. Apr. 21, 2015)....7

Bicon, Inc. v. Straumann Co.,
441 F.3d 945 (Fed. Cir. 2006)....16

Blackboard, Inc. v. Desire2Learn, Inc.,
574 F.3d 1371 (Fed. Cir. 2009)....13

Black & Decker, Inc. v. Robert Bosch Tool Corp.,
260 F. App'x 284 (Fed. Cir. 2008)....15

Catalina Mktg. Int'l, Inc. v. Coolsavings.com, Inc.,
115 F. App'x 84 (Fed. Cir. 2004)....3

Default Proof Credit Card Sys. v. Home Depot U.S.C., Inc. (d/b/a The Home Depot),
412 F.3d 1291 (Fed. Cir. 2005)....4, 5

Elekta Instrument S.A. v. O.U.R. Sci. Int'l, Inc.,
214 F.3d 1302, 54 USPQ2d 1910 (Fed. Cir. 2000)....20

Ergo Licensing, LLC v. CareFusion 303, Inc.,
673 F.3d 1361 (Fed. Cir. 2012)....5

HealthSpot, Inc. v. Computerized Screening, Inc.,
No. 1:14-CV-00804, 2015 WL 1523960 (N.D. Ohio Apr. 2, 2015)....12

In re Paulsen,
30 F.3d 1475 (Fed. Cir. 1994)....13

Intel Corp. v. Broadcom Corp.,
172 F. Supp. 2d 478 (D. Del. 2001)....9

Lifeport Scis. LLC v. Endologix, Inc.,
No. CV 12-1791-GMS, 2015 WL 4141819 (D. Del. July 9, 2015)....12

Lockheed Martin Corp. v. Space Sys./Loral, Inc.,
324 F.3d 1308 (Fed. Cir. 2003)..9

M2M Sols. LLC v. Sierra Wireless Am., Inc.,
No. CV 12-30-RGA, 2015 WL 5826816 (D. Del. Oct. 2, 2015)..2

Med. Instrumentation & Diagnostics Corp. v. Elekta AB,
344 F.3d 1205 (Fed. Cir. 2003)..4

Media Rights Techs., Inc. v. Capital One Fin. Corp.,
800 F.3d 1366 (Fed. Cir. 2015)...1, 13

North Am. Container, Inc. v. Plastipak Packaging, Inc.,
415 F.3d 1335 (Fed. Cir. 2005)..20

Oatey Co. v. IPS Corp.,
514 F.3d 1271 (Fed. Cir. 2008)..20

Omega Eng'g Inc. v. Raytek Corp.,
334 F.3d 1314 (Fed. Cir. 2003)..15

Robert Bosch, LLC v. Snap-On Inc.,
769 F.3d 1094 (Fed. Cir. 2014)..2

Sinorgchem Co., Shandong v. Int'l Trade Comm'n,
511 F.3d 1132 (Fed. Cir. 2007)..20

St. Clair Intellectual Prop. Consultants, Inc. v. Toshiba Corp.,
No. 09–354, 2015 WL 865474 (D. Del. Feb. 25, 2015) 3

Visual Networks Operations, Inc. v. Paradyne Corp.,
No. CIV.A. DKC 2004-0604, 2005 WL 1411578 (D. Md. June 15, 2005) 12

Vitronics Corp. v. Conceptronic, Inc.,
90 F.3d 1576 (Fed. Cir. 1996)...19, 20

Wenger Mfg., Inc. v. Coating Machine Sys., Inc.,
239 F.3d 1225 (Fed. Cir. 2001)..3

Williamson v. Citrix Online, LLC,
792 F.3d 1339 (Fed. Cir. 2015)...12, 13

I. INTRODUCTION

Zonoff hereby responds to the Opening and Supplemental Claim Construction Briefs submitted by Icontrol. (*See* D.I. 79 and 81.) Zonoff respectfully requests that this Court adopt Zonoff's proposed constructions.

II. DISPUTED TERMS FOR CONSTRUCTION

A. U.S. Patent No. 7,262,690

Term 1. "control unit for receiving signals from a variety of detection devices monitoring events pertaining to security"

Claim(s)	Icontrol's Proposed Construction	Zonoff's Proposed Construction
1	This is not a means plus function term	This is a means plus function term
	Plain and ordinary meaning	*Function:* receiving signals from a variety of detection devices monitoring events pertaining to security
		Structure: ACU 50 which includes an RSC300 chip 500, a microprocessor 510, non-volatile Flash memory 501, a microphone 502 with a dual monostable 503 to control its operation and an automatic gain control 504, a speaker 520, user interface controls 506, a low power radio transmitter 507, an 868 MHz low power radio receiver, a power supply with battery backup 518, a modem 519, resistors, capacitors, and logic elements

Icontrol incorrectly argues that Zonoff's proposed construction does not properly consider the specification. (D.I. 79 at 6.) However, Zonoff does not ignore the specification. Rather, its proposed construction takes into account that "control unit" recites a generic term that, ***properly construed in light of the specification***, lacks sufficiently definite structure to a person of ordinary skill in the art, and therefore the presumption is overcome and the patentee has invoked means-plus-function claiming. (*See* D.I. 80 at 4-6.); *Media Rights Techs., Inc. v. Capital One Fin. Corp.*, 800 F.3d 1366, 1372 (Fed. Cir. 2015).

Icontrol argues that a person of ordinary skill would understand that a "control unit" would include various components of specific embodiments disclosed in the specification. (D.I.

79 at 7.) This is perplexing, given that Icontrol is not arguing that "control unit" needs to be construed. And while these citations to the specification may prove useful in step two of the two-step means-plus-function claim construction analysis, *i.e.*, "attempt[ing] to construe the disputed claim term by identifying the 'corresponding structure, material, or acts described in the specification' to which the claim term will be limited," they do not show why the term "control unit" itself recites sufficiently definite structure to pass step one. *Robert Bosch, LLC v. Snap-On Inc.*, 769 F.3d 1094, 1097 (Fed. Cir. 2014) (citation omitted).

Next, Icontrol argues that Zonoff's construction disregards the "nature and structure of the claim where the term 'control unit' appears." (D.I. 79 at 7.) In doing so, it relies on *M2M Sols. LLC v. Sierra Wireless Am., Inc.*, No. CV 12-30-RGA, 2015 WL 5826816, at *2 (D. Del. Oct. 2, 2015). That case is inapposite because the *M2M* court found that the "claim limitation recites sufficient structure for a person of skill in the art to be 'able to write a software program for implementing such an algorithm for use in a wireless data module.'" *Id.* at *2 (D. Del. Oct. 2, 2015). In this case, however, the claim limitation as a whole provides no structure such that one of skill in the art could understand what a "control unit" is.

Icontrol further argues that "by extension, claim 1 requires that the 'control unit' include at least the structure of the 'means for transferring' and the structure for the 'control means.'" (D.I. 79 at 8.) Zonoff is aware of no claim construction authority (and Icontrol cites none) that grants claim terms structures "by extension" of other means-plus-function terms present in the same claim so as to avoid invoking § 112, ¶ 6. Even if that were somehow a valid way to construe the claim, there is nothing that suggests that the structures that correspond to the functions of "***transferring*** information . . ." and "***actively controlling*** one or more detection devices" are also the structures that correspond to the broader function to which "control unit" corresponds, *i.e.*, "***receiving*** signals from a variety of detection devices."

Icontrol also argues that, if the Court deems "control unit" to invoke § 112, ¶ 6, Zonoff's proposed construction should be rejected because it identifies structures that are not needed to perform the recited function. (D.I. 79 at 8.) Icontrol relies on *Wenger Manufacturing, Inc. v. Coating Machine Systems, Inc.* to argue that the Court may not import additional structure that is unnecessary to perform the claimed function. 239 F.3d 1225, 1233 (Fed. Cir. 2001). That holding does not compel rejection of Zonoff's construction. In *Wenger* the claim recited an "air circulation means" having a corresponding function of "***circulating*** air through said reel." *Wenger*, 239 F.3d at 1232 (emphasis added). The Federal Circuit found that it was erroneous to include additional structure that allowed for ***recirculating*** air, as the claim only required structure that provided for ***circulating*** air. *Id.* at 1233. In contrast, the '690 specification expressly links the recited function to the automatic control unit ("ACU") 50 in the Abstract, and it states that the ACU 50 has the exact structure Zonoff has proposed. '690 patent, 16:21-33. It does not link only part of the ACU to the function. Therefore, the structure of the ACU 50, in its entirety, should be the structure for the recited function, because no other (or lesser) structure is clearly linked to the function. *See Catalina Mktg. Int'l, Inc. v. Coolsavings.com, Inc.*, 115 F. App'x 84, 87-88 (Fed. Cir. 2004) (construing corresponding structure for the "selection means" limitation as "the entire structure that permits selection of a coupon [a touch screen]—and not the minute substructure [a part of the touchscreen which sends the interrupt signal to the microprocessor]" because "***the only structure that corresponds to the selection means in the specification is a touch screen***.") (emphasis added); *St. Clair Intellectual Property Consultants, Inc. v. Toshiba Corp.*, No. 09–354, 2015 WL 865474, at *2 (D. Del. Feb. 25, 2015) (construing the PCMCIA control unit 13 as corresponding structure where the patent did not indicate that certain of its sub-elements were sufficient to perform the claimed function). Since "[t]he duty of a patentee to clearly link or associate structure with the claimed function is the *quid pro quo* for allowing the patentee to express the claim in terms of function," and the specification only links the entire ACU 50 to the recited function, Zonoff's proposed structure is correct. *Med. Instrumentation & Diagnostics Corp. v. Elekta AB,* 344 F.3d 1205 (Fed. Cir. 2003).

Further, Icontrol asserts that numerous components of the ACU 50 are not necessary for the recited function. However, one of ordinary skill in the art must be able to recognize which components ***correspond*** to the claimed function. *AllVoice Computing PLC v. Nuance Commc'ns., Inc.*, 504 F.3d 1236, 1241 (Fed. Cir. 2007). Icontrol cites to no intrinsic or extrinsic evidence supporting its position that one of skill in the art could recognize such components from the specification's description of the ACU 50. Instead, Icontrol cherry-picks a few components of the ACU 50 that it submits are unnecessary. (*See* D.I. 8-9.) But no evidence supports this selection. To the contrary, several of the components Icontrol identifies ***would*** be involved in "receiving signals . . . ," including the "battery backup 518" and "resistors, capacitors, and logic elements." *See Default Proof Credit Card Sys. v. Home Depot U.S.C., Inc. (d/b/a The Home Depot)*, 412 F.3d 1291, 1298 (Fed. Cir. 2005) (requiring corresponding structure to "include all structure that actually performs the recited function") (citation omitted). For these reasons as well as those discussed in Zonoff's Opening Brief (D.I. 80 at 4-6), this Court should adopt Zonoff's proposed construction.

Term 2. "control means for actively controlling one or more detection devices"

Claim(s)	Icontrol's Proposed Construction	Zonoff's Proposed Construction
1	This is a means plus function term	This is a means plus function term
	Function: plain and ordinary meaning	*Function:* actively controlling one or more detection devices

Claim(s)	Icontrol's Proposed Construction	Zonoff's Proposed Construction
	Structure(s): "dual monostable circuit" or an "electronic timing switch" (D.I. 79 at 9-10)	*Structure(s):* not supported in the specification

It is unclear whether or not Icontrol wants the Court to identify structure that corresponds to the claimed function. Icontrol originally proposed a construction that did not actually identify any structures, and only vaguely recited "applicable portions of the alarm control unit (Figure 5)." (*See* D.I 71, Ex. 1 at 3.) Taking that approach would be contrary to Federal Circuit precedent, which requires actual identification of structure. *See, e.g.*, *Ergo Licensing, LLC v. CareFusion 303, Inc.*, 673 F.3d 1361, 1363 (Fed. Cir. 2012) (concluding that structure for claim term "control means" was not supported in specification where patentee only pointed to a general disclosure); *Default Proof Credit Card Sys., Inc. v. Home Depot U.S.A., Inc. (d/b/a The Home Depot)*, 412 F.3d 1291, 1298 (Fed. Cir. 2005) ("This duty to link or associate structure to function is the *quid pro quo* for the convenience of employing § 112, ¶ 6."). In its Opening Brief, Icontrol suggests something more concrete. It lists the "dual monostable (503)" and "an electronic timing switch" components as examples of the purported "applicable portions" of the alarm control unit. (D.I. 79 at 9-10.) To the extent Icontrol contends that these two components are the corresponding structures, its construction must be rejected. The portions of the specification on which Icontrol relies make clear that these alarm control unit components do not control a microphone by themselves; rather, they are activated by the processor. *See* '690 patent, 16:42-44 ("The dual monostable (503) is used . . . in response to a signal from the processor."); *id.* at 16:52-54 (The "electronic timing switch . . . is activated by a signal from the RSC300 [processor] prior to pattern recognition."). Thus, the RSC300 would have to be a part of any structure identified to correspond to the claimed function. But, as discussed in Zonoff's opening brief, there is insufficient description of algorithmic structure explaining how the microprocessor performs the function. (*See* D.I. 80 at 7.) As such, the Court should not adopt Icontrol's construction. It should instead find that corresponding structure that performs the recited function is absent from the specification.

Term 3. "means for transferring information related to the reception of such signals to a remote monitoring station"

Claim(s)	Icontrol's Proposed Construction	Zonoff's Proposed Construction
1	This is a means plus function term	This is a means-plus-function term
	Function: plain and ordinary meaning	*Function:* transferring information related to the reception of such signals to a remote monitoring station
	Structure(s): the low power radio transmitter (D.I. 79 at 10-11)	*Structure(s):* not supported in the specification

In its Opening Brief, and without prior notice to Zonoff, Icontrol disclosed for the first time a new proposed construction for this term.[1] Instead of proposing a "modem" as the structure corresponding to the function of this means-plus-function term, as it had done in its identification of proposed claim constructions, Icontrol now contends that the structure is "the low power radio transmitter." (D.I. 79 at 10-11.) However, this cannot be the structure that performs the recited function of "transferring information related to the reception of such signals to a remote monitoring station." Icontrol supports its construction by citing to a sentence in the specification that states "[i]f the two sounds match then the ***generated signals receiving unit*** sends a signal to the part of the ACU adapted to transmit information relating to the generated signals to the AMS, ***using the low power radio transmitter*** (507)." '690 patent, 17:1-5 (emphasis added); (*see* D.I. 70 at 10.) But this sentence does not state that the low power radio transmitter transfers information ***to a remote monitoring station***, as required by the claim.

[1] This is not the only instance in which Icontrol has identified new claim construction positions in briefs without prior notice to Zonoff. *Compare* D.I. 76 at Ex. 1 with D.I. 81 at 1-3 ("logic . . ."); *see* Section II.c, *infra*. Zonoff reserves all rights to move to strike constructions proposed by Icontrol for the first time in its briefing.

Rather, it states that the ***generated signals receiving unit***—a part of the ACU physically separate from the control panel portion—uses the low power radio transmitter to send a signal to the separate part of the ACU adapted to transmit information. Therefore, the specification does not disclose that the ACU uses the low power radio transmitter (507) to send a signal to ***a remote monitoring station***.

Other portions of the specification reinforce that the low power radio transmitter is used to send signals between the ACU components, not to the remote monitoring station. For example, Figure 5 includes the low power radio transmitter (507) in the generated signals receiving unit. Col. 18, ll. 15-21 of the specification states that "the Sound sends a signal ***to the part of the ACU*** adapted to transmit information to the AMS ***via low power radio*** stating the sound identity . . . ." It then goes on to explain that "[t]he ***ACU*** then ***forwards this message to the monitoring station*** . . . ," but it does not specify what structure is performing this forwarding function to the monitoring station. *Id.* (emphasis added). Since the specification does not link the low power radio transmitter to the function of "transferring information related to the reception of such signals to a remote monitoring station," it cannot be the corresponding structure.

Lastly, Icontrol's proposed structure suffers from fatal ambiguity. There is nothing in the intrinsic record that clarifies what "low power" means in the context of the patent, and Icontrol has offered no evidence of how a person of ordinary skill in the art would understand the term. As such, the Court should not adopt this ambiguous term as part of a claim construction. *See Bayer Intellectual Prop. GmbH v. Warner Chilcott Co., LLC*, No. CV 12-1032-GMS, 2015 WL 1849015, at *2 (D. Del. Apr. 21, 2015) (court cannot construe terms involving words of degree such as "low" because such terms have no standards against which to draw comparisons where the patent offers no suggestions for how to measure the criteria).

For the reasons discussed in Zonoff's Opening Brief, there is no support in the specification for any structure that performs this function. (*See* D.I. 80 at 7-8.)

Term 4. "programmable storage means storing automatic evaluation routines to initiate the automatic transfer of information to a chosen remote user terminal"

Claim(s)	Icontrol's Proposed Construction	Zonoff's Proposed Construction
1	This is a means plus function term	This is a means plus function term
	Function: plain and ordinary meaning	*Function:* storing routines that allow the monitoring station to identify events detected by detection devices and initiate an automatic transfer of information determined by the nature of the identified event to a chosen remote user terminal
	Structure(s): The structure linked to the recited function is the non-volatile memory	*Structure(s):* a combination of Alarm Monitoring System 102, Alarm Control Unit Configuration Database 103, and Alert Generation Database 104

By pointing to portions of the patent other than the claim language to support its proposed construction, Icontrol actually proves Zonoff's point, *i.e.*, the claimed function requires construction because the claim language itself does not provide enough guidance as to what "automatic evaluation routines to initiate the automatic transfer of information to a chosen remote user terminal" means. (D.I. 79 at 11.) Further, Icontrol misleadingly argues that "***identifying recipients*** and ***initiating the sending of alerts*** to those recipients is an example of the recited function." *Id.* But "identifying recipients" and "initiating the sending," are not examples of ***storing***, which is the recited function at issue. As such, Icontrol's arguments in support of a purported plain and ordinary meaning construction of the function should be disregarded.

Icontrol's attacks on Zonoff's construction are misplaced. Icontrol argues that it is improper to construe the function in a means-plus-function claim, and that Zonoff's construction reads in limitations from the specification. (D.I. 79 at 11-12.) However, the Federal Circuit has stated "we . . . construe the meaning of the words used to describe the claimed function, using ordinary principles of claim construction." *Lockheed Martin Corp. v. Space Sys./Loral, Inc.*, 324 F.3d 1308, 1319 (Fed. Cir. 2003). As such, courts are required to construe a claimed function in view of the intrinsic evidence. *See, e.g., Intel Corp. v. Broadcom Corp.*, 172 F. Supp. 2d 478, 499 (D. Del. 2001) (narrowing the construction of a function in view of the patent and prosecution history). That is exactly what Zonoff proposes. (*See* D.I. 80 at 8-9.)

Further, Icontrol's proposed corresponding structure—"non-volatile memory"—is not supported by the intrinsic record. The specification only refers to "non-volatile memory" as a component of the ACU. *See* '690 patent, 16:21-22; 16:30-32; Figs. 5 & 6. However, the specification requires, and indeed Icontrol concedes, that automatic evaluation routines are stored in the ***alert generation database,*** which is a part of the ***alert monitoring system***. *See id.* at 5:6-13; 8:24-35; Fig. 2; (D.I. 79 at 12 ("Icontrol contends . . . the Alert Generation Database includes the automatic evaluation routines which identify the recipients (users) of alerts."). The ACU and the alert monitoring system are different, as is made clear throughout the specification and in claim 1—*i.e.*, in claim 1 the monitoring system is required to be "remote" from the control unit. *See* '690 patent, 2:31-34; Figs. 1 & 4b. Therefore, non-volatile memory cannot be the structure of the programmable storage means that stores automatic evaluation routines to initiate the automatic transfer of information to a chosen remote user terminal.

B. U.S. Patent No. 8,612,591

Term 1. "proprietary to the security system"

Claim(s)	Icontrol's Proposed Construction	Zonoff's Proposed Construction
57	used only with the security system	useful only with the security systems of the same vendor

Icontrol argues that Zonoff's proposed construction should be rejected because it contradicts the specification. That is not the case. In formulating its argument, Icontrol omits important introductory sentences in the Background section that characterize proprietary security system components. *See* '591 patent, 1:57-63 ("For example, ***a wireless motion sensor from vendor A cannot be used with a security panel from vendor B***") (emphasis added). Icontrol appears to argue that Zonoff's construction cannot be correct because an object of the invention is to be able to use both proprietary and non-proprietary components together. Assuming, without admitting, that Icontrol's characterization of the object of the invention is correct, Zonoff's construction does not preclude that objective. Indeed, Claim 57 actually requires "a network user interface that provides access ***to data of devices of the LAN***," *i.e.*, whether those devices are proprietary to the security system or not. *Id.* at 54:37-39 (emphasis added).

Further, Icontrol asserts that its construction is supported by the specification, but it ignores the passages in the specification that Zonoff cites in its Opening Brief which clearly associate proprietary with useful only with the security systems of the same vendor. (See D.I. 80 at 10.) Finally, Icontrol's argument that such a requirement would require "pointless inquiry into business records to determine whether a product comes from a single vendor" is irrelevant to a claim construction analysis. (*See* D.I. 79 at 14.) The specification supports Zonoff's proposed construction, regardless of what amount of burden it may place on the patentee to prove infringement.

C. U.S. Patent No. 8,478,871

Term 1. "logic that [1] sends via the remote network a request to a gateway registry, the request specifying a serial number of the gateway device, [2] receives an address of a gateway server that has an account associated with the gateway device and an identification of the account, [3] sends to the gateway server the identification of the account, and [4] manages the set of local management devices using account information received in response to the identification"

Claim(s)	Icontrol's Proposed Construction	Zonoff's Proposed Construction
1	***Originally identified construction:*** This is a means plus function term *Function:* Plain and ordinary meaning *Structure:* Logic 816; Col. 8 Li. 45-56 (D.I. 76, Ex. 1 at 3)	This is a means plus function term *Function:* Plain and ordinary meaning *Structure:* Not supported in the specification
	Newly identified construction: This is not a means plus function term Plain and ordinary meaning (no construction proposed) (D.I. 81 at 1-3)	
	Alternative newly identified construction: If the Court finds this term is a means plus function term *Function:* Plain and ordinary meaning *Structure:* devices (816), automations (804), mode (806), task scheduler (813) and server updater (814), portions of the gateway device (D.I. 81 at 3-4)	

In its Supplemental Opening Claim Construction Brief, Icontrol advances for the first time without prior notice a new construction of "logic . . . ".[2] Icontrol now contends that this term is ***not*** subject to § 112, ¶ 6 and, if it is, that the structure corresponding to the claimed means includes device (816), automations (804), mode (806), task scheduler (813) and server updater (814). Icontrol's position is untenable.

Courts in this District and throughout the country have found the term "logic" to not recite specific structure and, therefore, to invoke § 112, ¶ 6. *See, e.g., ABB Atomation Inc. v. Schlumberger Res. Mgmt. Servs., Inc.*, No. CIV.A. 01-077-SLR, 2003 WL 1700013, at *1 (D. Del. Mar. 27, 2003) ("The court finds that 'logic' does not recite sufficient structure to avoid

[2] *See* footnote 1, *supra*.

means-plus-function analysis.”); *HealthSpot, Inc. v. Computerized Screening, Inc.*, No. 1:14-CV-00804, 2015 WL 1523960, at *12 (N.D. Ohio Apr. 2, 2015) (same); *Visual Networks Operations, Inc. v. Paradyne Corp.*, No. CIV.A. DKC 2004-0604, 2005 WL 1411578, at *30 (D. Md. June 15, 2005) (finding the presumption to be rebutted as the term “logic for determining at least one dedicated time slot(s)” “describes only a function, not a structure.”).

As in *Williamson*, the term at issue here is written in means-plus-function format—replacing the word “means” with the word “logic.” *See Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1350 (Fed. Cir. 2015). Indeed, “logic” is very much aligned with the term at issue in *Williamson*, “module,” as each term is no more than a “generic description for software or hardware that performs a specified function.” *See id.*; ’871 patent, 15:57-61 (describing logic as software or hardware). And, as in *Williamson*, neither the language of the claim nor the specification recites sufficiently definite structure to avoid § 112, ¶ 6 treatment. Claim 1 itself merely describes “logic” in terms of the function(s) it performs. Even Icontrol concedes this point when it argues that “the plain language of claim 1 indicates that the ‘logic’ performs [a] function.” (D.I. 81 at 1, 3.) And, while portions of claim 1 may “describe inputs and outputs at a very high level,” no language in the claim or the specification describes how “logic” carries out the claimed function. *See Williamson*, 792 F.3d at 1351.

Nor is this a case where “logic” is defined in the specification. Although Icontrol now insists that “logic” should be given its plain and ordinary meaning, it points to the specification as if to compel the Court to treat “logic” as a defined term. This is improper. *See Lifeport Scis. LLC v. Endologix, Inc.*, No. CV 12-1791-GMS, 2015 WL 4141819, at *5 (D. Del. July 9, 2015) (“To avoid application of § 112(f) when the claims fail to recite structure, the specification must make clear that the term itself has particular structural significance.”). And the non-limiting examples cited by Icontrol are far from a definition. *See In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994) (holding that although an inventor may define specific terms used to describe the invention, he must do so "with reasonable clarity, deliberateness, and precision"). To suggest that a person of ordinary skill, reading the "non-limiting example [of] automations 804, mode 806, task scheduler 813, and server updater 814" as well as "block 816," would understand that "logic" has a definitive, yet undefined, structure is even more unavailing. (*See* D.I. 81 at 2-3 (quoting '871 patent, 8:14-36)). *See Media Rights Techs*., 800 F.3d at 1372-73 (invoking § 112, ¶ 6 where "[t]he written description only depicts and describes . . . ***the potential—though not mandatory—functional components*** of the 'copyright compliance mechanism.' None of these passages, however, ***define*** 'compliance mechanism' in specific structural terms.") (emphasis added) (internal citation omitted).

Finally, in deciding whether this term is a means-plus-function term, the Court should take into account Icontrol's original position. That Icontrol initially agreed that the term "logic . . . " was a means-plus-function term reinforces Zonoff's position, *i.e.*, that one of skill in the art would not understand the term to have a sufficient meaning as the name for structure. (*See* D.I. 76, Ex. 1 at 3); *Williamson*, 792 F.3d at 1349.

Icontrol additionally claims that if the term is construed as a means-plus-function term, the specification nonetheless recites supporting structure: devices (816), automations (804), mode (806), task scheduler (813), and server updater (814). (D.I. 81 at 2-3.) However, as the Federal Circuit concluded in *Blackboard, Inc. v. Desire2Learn, Inc.*, when the specification only refers to "abstractions that describe[s] the function," it does not provide a description of structure. 574 F.3d 1371, 1383 (Fed. Cir. 2009). Just as in *BlackBoard*, where the Federal Circuit held that an "access control manager" cannot be the structure, what Icontrol has identified are "essentially black box[es] that perform[] a recited function. But how it does so is left undisclosed." *Id.* As discussed in Zonoff's Supplemental Opening Brief, there is no explanation in the specification as to how these or any components "manage[] the set of local management devices using account information received in response to the identification." (D.I. 82 at 3-4.) Icontrol has also failed to link or associate the structure to both the "sends . . ." and "manages . . ." functions. *See id.* at 2. The Court should, therefore, reject Icontrol's proposed construction and adopt Zonoff's proposed construction of this term.

Term 2. "gateway registry"

Claim(s)	Icontrol's Proposed Construction	Zonoff's Proposed Construction
1, 15	a server component that maintains records relating to the gateways	a repository that associates a serial number of a specific gateway device with an address of a specific gateway server and an account

Icontrol's proposed construction is overly broad and vague because the specification makes clear that the gateway registry associates at least a serial number of a specific gateway device with an address of a specific gateway server and an account. (*See* D.I. 81 at 11-12.) Icontrol claims that Zonoff's proposed construction requires "no more and no less" than associating a serial number of a specific gateway device with an address of a specific gateway server and an account. (D.I. 80 at 15.) That is not true. While Zonoff's proposed construction certainly requires no less than that, it does not preclude more and allows for "other arrangements" that the patentees contemplated. '871 patent, 3:38-39.

Icontrol's other criticisms of Zonoff's proposed construction are equally unfounded. For example, Icontrol cites to col. 3, ll. 6-10 to argue that Zonoff's construction ignores an embodiment disclosed in the patent because it requires the gateway registry to store serial numbers, addresses, and account information. However, this passage uses the "and/or" language in reference to the ***master database***. *See* '871 patent, 3:6-10 ("***Master database*** 202 can be used to communicate to gateway registry 214 the serial number of the gateway 206, the account number (or account identification) associated with the gateway, and/or the server address of the account associated with the gateway.") (emphasis added). Zonoff's construction also does not render superfluous Claims 18 and 19 which require a plurality of serial numbers and a plurality of accounts, thereby placing additional limitations on the claims. Claim 20 would not be rendered superfluous because it refers to a server that includes the account. *Black & Decker, Inc. v. Robert Bosch Tool Corp.*, 260 F. App'x 284, 290 (Fed. Cir. 2008) ("[B]ecause the dependent claims do add additional limitations, . . . we reject the district court's reliance on the [claim differentiation] doctrine"). Icontrol's proposed construction should be rejected, and the Court should adopt Zonoff's proposed construction.

D. U.S. Patent No. 8,335,842

Term 1. "autonomous network"

Claim(s)	Icontrol's Proposed Construction	Zonoff's Proposed Construction
1, 14	separate and distinct from other networks of the plurality of networks	a network wherein the premises management devices operate independent of other networks and devices

Icontrol's construction is untenable because it impermissibly reads out "autonomous" from the claim and ignores the prosecution history. The cases Icontrol cites do not support its position. Icontrol relies on *Omega Eng'g Inc. v. Raytek Corp.*, 334 F.3d 1314 (Fed. Cir. 2003), for the proposition that courts should construe claim terms to carry their "full ordinary and customary meaning," but Icontrol does not argue that autonomous' customary meaning is "separate and distinct." (*See* D.I. 79 at 16.) Nor could it, as the ordinary meaning of "autonomous" supports Zonoff's proposed construction. (*See* D.I. 80 at Ex. 3 (dictionary definition of autonomous is "acting independently").) Icontrol also cites to *ACTV, Inc. v. Walt Disney Co.* for the proposition that "[p]roper claim construction . . . demands interpretation of the entire claim in context, not a single element in isolation." 346 F.3d 1082, 1090 (Fed. Cir. 2003). Yet, Icontrol's proposed construction fails to consider the context of the entire claim, and by construing "autonomous" to mean "separate and distinct," it improperly reads out the claim term "autonomous" entirely. *See, e.g., Bicon, Inc. v. Straumann Co.*, 441 F.3d 945, 951 (Fed. Cir. 2006) ("[C[laims are interpreted with an eye toward giving effect to all terms in the claim.").

Further, Icontrol states: "the specification describes a ***gateway network*** that is 'self-sustaining' and 'autonomous' but not independent." (D.I. 79 at 17 (emphasis added).) First, this is an incorrect characterization of the specification, as the specification describes a ***gateway*** that is self-sustaining and autonomous, not a gateway network. *See* '842 patent, 12:10 ("The gateway can be self-sustaining and autonomous."). Second, nowhere does the specification describe a gateway, a gateway network, or any other network as being self-sustaining and autonomous but not independent. Third, Icontrol's criticism of Zonoff's construction is based on the apparent argument that "self-sustaining" means "independent," and since the specification describes a ***gateway*** that "can be self-sustaining and autonomous," the word "autonomous" cannot also mean "independent." This argument ignores the entirety of Zonoff's proposed construction. Plainly, a network of devices that operate independent of other networks and devices is not necessarily a self-sustaining network. Therefore, Icontrol's argument should be rejected and, for the reasons described in Zonoff's Opening Brief, Zonoff's proposed construction should be adopted.

Term 2. "associative binding"

Claim(s)	Icontrol's Proposed Construction	Zonoff's Proposed Construction
1, 14	coupling the output of one device (a sensor) to another device (an actuator)	a connection mechanism on the gateway that maps source device properties+values to destination device properties+values without containing code to do data conversion from the source device's data format to the

Claim(s)	Icontrol's Proposed Construction	Zonoff's Proposed Construction
		destination device's data format

Icontrol's proposed construction is the specification's definition of "binding," not the narrower "associative binding" the claims require. That the definition appears underneath the header "associative binding" does not alter the fact that the definition is of "binding," and the example of "a switch that triggers a light to go on" is an example of "binding" generally. '842 patent, 18:30-33. Further, Icontrol heavily relies on Figure 10, but Figure 10 supports adopting Zonoff's construction, as it shows the mapping of source device properties+values to destination device properties+values (e.g. "Device 1 Prop 2 Val 1 → Device 2 Prop 0 = 8fff") ***without containing code to do data conversion from the source device's data format to the destination device's data format***. As described in the specification, Figure 10 illustrates an embodiment where "source and destination data are ***specified in the table as untyped strings, so the gateway can do a string comparison, which may not involve knowledge of the data semantics*** [i.e., without containing code to do data conversion from the source device's data format to the destination devices data format] . . . ." '842 patent, 19:12-16 (emphasis added). Therefore, contrary to what Icontrol argues, Zonoff's construction does not depart from the specification.

Icontrol also alleges that Zonoff's proposed construction misstates the specification because associative binding allegedly cannot be a "connection mechanism on the gateway." (D.I. 79 at 18.) However, the very same figure Icontrol relies on, Figure 10, is described as "illustrat[ing] ***a gateway binding mechanism***." '842 patent, 19:1-2 (emphasis added). Figure 11 is likewise described as depicting a binding ***mechanism***: "FIG. 11 illustrates a camera snapshot binding mechanism." *Id.* at 20:21-22. The specification includes other examples that are consistent with Zonoff's use of "mechanism." *See, e.g., id.* at 17:40-44 ("The device definition file is ***the mechanism*** that permits the server software to handle this reinterpretation with a single common code module, independent of device types or technologies.") (emphasis added). Therefore, Zonoff's proposed construction of "associative binding" is well supported in the specification. For the foregoing reasons as well as the reasons stated in Zonoff's Opening Brief (D.I. 80 at 15-16), Zonoff's proposed construction should be adopted.

Term 3. "an assigned server address"

Claim(s)	Icontrol's Proposed Construction	Zonoff's Proposed Construction
1, 14	an address assigned by a server	address of the server that is assigned to the gateway prior to the first uplink connection

Icontrol's proposed construction should be rejected because it requires that the address be assigned ***by a server***, but there is no support in the specification for the proposition that the server performs the assigning. Icontrol argues that each use of the term "assigned server address" in the specification "describes the assignment of an address by a server." (D.I. 79 at 19.) However, Icontrol only provides ***one*** citation to the specification, which states: "Gateways can contact a common server for their first uplink connection in order to ***obtain*** their assigned gateway server address, which they can use for all subsequent uplink connections (unless changed later by the system)." '842 patent, 10:64-67 (emphasis added). This passage indicates that gateways receive their assigned server addresses from the server, but it does not support the proposition that the server actually performed the assigning. Indeed, the specification is silent regarding who or what assigned the server addresses.

In order for a gateway to ***obtain its assigned server address***, the assigned server address must have ***previously been assigned*** to the gateway. This is supported in the claim itself, as the limitation reads "obtaining an assign***ed*** server address," requiring the address be assigned prior to it being obtained. Icontrol also argues that that the claim phrase "unless the assigned server address is changed later by the system" illustrates a flaw in Zonoff's construction. (D.I. 79 at

19.) It does not. That an assigned server address may later be changed to a different server address does not impact the circumstances under which an assigned server address is originally assigned.

Therefore, Zonoff's proposed construction is appropriate because it requires that the assigned server address be assigned to the gateway prior to the first uplink connection. For these reasons as well as the reasons stated in Zonoff's Opening Brief (*see* D.I. 80 at 17-18), this Court should adopt Zonoff's proposed construction.

Term 4. "initiating, by the gateway, all communications with a network operations center server using the assigned server address"

Claim(s)	Icontrol's Proposed Construction	Zonoff's Proposed Construction
1, 14	when the gateway initiates communications with a network operations center, the gateway does so using the assigned server address	all communications between the gateway and the network operations center server are initiated by the gateway and use the assigned server address

Icontrol's points to two items of intrinsic evidence to support its construction: 1) a citation to the specification that it incompletely quotes in a parenthetical; and, 2) the claim language itself. Icontrol cites to the '842 patent at col. 10 l. 59-col. 11 l. 3, but it only quotes the portion of the cited language that substantially repeats the claim language. Tellingly, the language it omits is a disclosed embodiment that supports Zonoff's construction. *See* '842 patent, 10:60-61 ("The Gateway can initiate all communications with the server."). Icontrol then criticizes Zonoff as seeking to "artificially narrow" the limitation and "ignor[ing] embodiments disclosed in the specification,"[3] while Icontrol ignores the prosecution history (D.I. 79 at 20.)

[3] In making this argument, Icontrol improperly cites *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1583 (Fed. Cir. 1996). (*See* D.I. 79 at 20.) In that case, the Federal Circuit did not say that outcomes that ignore any "embodiments of the specification" are "rarely, if ever, correct." Instead, the Federal Circuit stated that a claim interpretation that excludes a "***preferred (and indeed only)*** embodiment" is "rarely, if ever, correct." *Vitronics,* 90 F.3d at 1583 (emphasis added). Even Icontrol concedes in its Opening Brief that different claims of the same

As explained above and in Zonoff's Opening Brief, the intrinsic record requires the interpretation that Zonoff proposes. Further, the Federal Circuit has made it clear time and time again in similar circumstances that it is appropriate to adopt a claim construction which excludes an embodiment—even if it is the sole or preferred embodiment. *See, e.g.*, *Oatey Co. v. IPS Corp.*, 514 F.3d 1271, 1276-77 (Fed. Cir. 2008) ("we have interpreted claims to exclude embodiments of the patented invention where those embodiments are clearly disclaimed in the . . . prosecution history"); *Sinorgchem Co., Shandong v. Int'l Trade Comm'n*, 511 F.3d 1132, 1138-39 (Fed. Cir. 2007) ("Where, as here, multiple embodiments are disclosed, we have previously interpreted claims to exclude embodiments where those embodiments are inconsistent with unambiguous language in the patent's specification or prosecution history."); *North Am. Container, Inc. v. Plastipak Packaging, Inc.*, 415 F.3d 1335, 1345–46 (Fed. Cir. 2005) (excluding from claim scope certain embodiments in the drawings based on disclaimer during prosecution); *Elekta Instrument S.A. v. O.U.R. Sci. Int'l, Inc.*, 214 F.3d 1302, 1308, 54 USPQ2d 1910, 1914 (Fed. Cir. 2000) (adopting a claim construction in light of the prosecution history and the unambiguous language of an amended claim which excluded a preferred and sole embodiment disclosed in the specification). This Court should therefore adopt Zonoff's proposed construction.

III. CONCLUSION

For the foregoing reasons, Zonoff respectfully asks that this Court adopt Zonoff's proposed claim constructions for the claim terms at issue.

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patent can cover different embodiments. (*See, e.g.*, D.I. 79 at 14 (referring to claim 1 of the '871 patent as one embodiment and claim 15 of the '871 patent as a "separate embodiment").)

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